

INTRODUCTION

- [1] The Tenant applied for a return of double the security deposit and interest on the original security deposit.

DISPOSITION

- [2] I find that the Landlord must pay the Tenant double the security deposit and the interest on the original amount of the security deposit, in the amount of \$1,907.32.

BACKGROUND

- [3] On August 4, 2023 the parties entered into a written, fixed-term tenancy agreement for the period of September 1, 2023 to August 31, 2024. An \$1,850.00 security deposit was paid on August 14, 2023. Rent was \$1,850.00 due on the first day of the month.
- [4] In October of 2023, the Landlord provided the Tenant with notice that the property manager had changed. The notice included the new property manager's contact information and stated that "Leases will be renewed yearly."
- [5] On August 9, 2024 the new property manager (the "Representative") requested that the tenancy agreement be renewed for a new fixed-term from September 1, 2024 to August 31, 2025. The Tenant stated that she signed the new agreement, but felt she was pressured into signing the agreement. The Tenant stated that the Representative told her orally that she only needed to give one month plus seven days' notice.
- [6] On August 18, 2024 the Tenant gave the Representative a *Form 3 Tenant Notice of Termination* effective September 30, 2024.
- [7] On September 29, 2024 the Tenant informed the Representative that she completed cleaning and was vacating the Unit. The Tenant stated that the Representative instructed her to leave the Unit's keys on the counter.
- [8] On October 21, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Tenant emailed the Application to the Representative. The Tenant stated that she did not email a copy of the Application to the Landlord because the Representative told her not to contact the Landlord in past conversations.
- [9] On October 21, 2024 the Representative e-Transferred the Tenant the security deposit in the amount of \$1,850.00.
- [10] On November 1, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, scheduled for December 3, 2024.
- [11] On November 29, 2024 the Rental Office sent the parties an evidence package via Titan File. The evidence package included a total of 17-pages of documents and one video submitted only by the Tenant.
- [12] Prior to the start of the hearing, the Rental Office emailed the parties 8-pages of additional documents that were submitted by the Tenant. The 8-pages were in addition to the original evidence package.
- [13] On December 3, 2024 the Tenant participated in the hearing. The Representative did not call into the hearing at the scheduled time.

[14] I temporarily delayed the start of the hearing. I emailed the Representative a reminder of the hearing and provided the teleconference details. I also telephoned the Representative using the phone number provided on the Application. I note that it was the same telephone number found in documents submitted into evidence (e.g., the August 9, 2024 tenancy agreement). I received no answer from the phone number. After waiting ten minutes, the hearing proceeded in the Representative's absence.

ISSUE

i. Must the Landlord return the security deposit and interest to the Tenant?

ANALYSIS

[15] For the reasons below, I find that the Landlord must pay the Tenant the interest on the original amount of the security deposit and double the security deposit, in the amount of \$1,907.32.

[16] The Tenant stated that she had noise complaints which resulted in the Representative providing her with different living accommodations within the residential property. The Tenant wanted the original tenancy agreement to continue on a month-to-month basis, because she intended to vacate the Unit at some point in the near future. The Tenant stated that the Representative insisted that she sign a new tenancy agreement, because the bank required a signature for finance purposes.

[17] The Tenant described feeling pressured and coerced into signing another fixed-term tenancy agreement. The Tenant stated that the Representative said "she could not live there without a signature." The Tenant also stated that she was told by the Representative that she could leave with only one month's notice plus seven days. The experience of this incident led to the Tenant giving notice and vacating in September of 2024.

[18] The Tenant stated that she vacated the Unit on September 29, 2024. The Tenant stated that she contacted the Representative to request a move-out inspection. The Representative declined to do a move-out inspection with the Tenant and instructed the Tenant to leave the keys on the counter.

[19] The Tenant stated that she text messaged the Representative on October 11, 2024 about getting her security deposit back. She received no response from the Representative.

[20] I have reviewed the evidence and I make the following determination.

[21] Section 40 of the *Residential Tenancy Act* (or the "Act") addresses the retention and return of a security deposit, stating in part as follows:

- (1) *Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either*
 - (a) *issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
 - (b) *make an application to the Director under section 75 claiming against the security deposit.*

[22] The Tenant provided testimony that she wished to continue the tenancy on a month-to-month basis but felt pressured by the Representative. Generally, by operation of law, fixed-term tenancy agreements automatically convert to a month-to-month basis under section 52 of the Act.

[23] In this case, it appears there is no provision in the original tenancy agreement which required the parties to renew the fixed-term. I note that the notice of property manager change did mention that the "Leases will be renewed yearly." However, this was not part of the original tenancy agreement and was not enforceable upon the Tenant.

- [24] I note that the copy of the tenancy agreement submitted by the Tenant into evidence is a duplicate unsigned version of the agreement.
- [25] The Tenant stated that she felt pressured into signing a renewed fixed-term agreement. The Tenant did not have to sign the tenancy agreement because the original agreement would have converted to a month-to-month agreement.
- [26] What the Tenant has described is duress. The Act does not define “duress”.
- [27] Black’s Law Dictionary defines “Duress” as being “Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would). Subjecting person to improper pressure which overcome his will and coerces him to comply with demand to which he would not yield if acting as free agent... A condition where one is induced by wrongful act or threat of another to make a contract or perform a tortious act under circumstances which deprive him of exercise of free will. ... Also, if a party’s manifestation of assent to a contract is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.”
- [28] In *Lei v. Crawford*, 2011 ONSC 349 (CanLII), the Court wrote:
- “Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner.”*
- [29] The Tenant provided undisputed evidence that she was pressured to sign a new fixed-term agreement or face eviction. The Tenant stated that she was told “she could not live there without a signature.” The Tenant stated that at the time she was not prepared to vacate the Unit and felt she had no other choice but to sign the renewed fixed-term.
- [30] I find that the behaviour described by the Tenant amounts to duress. The Tenant had an ultimatum – renew the fixed-term or be evicted. Such an ultimatum is unlawful. A tenant cannot be evicted for such reasons and when a fixed-term expires, by operation of law, the existing agreement automatically converts to a month-to-month agreement. To present such an ultimatum to the Tenant was unfair and would have put unfair pressure on the Tenant to sign the fixed-term agreement.
- [31] Further, the Tenant’s undisputed testimony is that she was promised by the Representative that she could end the fixed-term early and move out of the Unit if she gave one month’s notice plus seven days to the Representative.
- [32] I find that based on the Tenant’s undisputed evidence that she did comply with this agreed upon notice period and on August 18, 2024 the Tenant gave the Representative notice for effect September 30, 2024.
- [33] This means that the Landlord had until October 15, 2024 to return the security deposit to the Tenant or file an application with the Rental Office. The Landlord did neither.
- [34] I find that the Landlord did not comply with section 40 of the Act. Therefore, subsection 40(4) of the Act is triggered, which states:
- (4) *Where a landlord does not comply with this section, the landlord*
- (a) *shall not make a claim against the security deposit; and*
- (b) *shall pay the tenant double the amount of the security deposit.*

- [35] Consequently, the Landlord must pay the Tenant double the security deposit amount and also the interest on the original amount of the security deposit.
- [36] The Island Regulatory and Appeals Commission Order LR24-48 commented on the consequences for landlords who do not comply with section 40 of the Act:

“The Commission has made it abundantly clear to landlords on numerous past appeals filed since the Act came into force that a failure by a landlord to comply with the requirements of section 40 of the Act will result in serious consequences for that landlord and neither the Rental Office or the Commission has any power to temper, ease or show mercy to landlords in this regard. Section 40, as is the entire Act, is the creation of the Legislative Assembly of Prince Edward Island and both the Rental Office and the Commission do not possess inherent jurisdiction and only have the powers granted under the Act, and in the case of the Commission, also granted under the Island Regulatory and Appeals Commission Act.”

- [37] The Application is allowed. The Landlord must pay the Tenant double the security deposit required under subsection 40(4) of the Act and the accrued interest on the original amount of the security deposit required under subsection 14(9) of the Act. The calculations are as follows:

Item	Amount
Security Deposit	\$1,850.00
Interest (Aug. 14/23 – Oct. 21/24)	\$51.29
Security Deposit (Double Awarded)	\$1,850.00
Less October 21, 2024 Payment	(\$1,850.00)
Total Due	\$1,901.29

- [38] I also note that the Representative declined to complete a move-out inspection with the Tenant. I remind the Landlord that under sections 18 and 38 of the Act a landlord must complete a move in and move out inspection with their tenant(s) and complete *Form 5 Landlord Condition Inspection Reports* for each inspection.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$1,901.29 by January 7, 2025.

DATED at Charlottetown, Prince Edward Island, this 18th day of December, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.